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No. 631

In the
Supreme Court of the United States
OCTOBER TERM, 1968.

YELLOW CAB COMPANY,
a Maine corporation,
Petitioner,

vs.

DEMOCRATIC UNION ORGANIZING COMMITTEE,
LOCAL 777, S.I.U.N.A., AFL-CIO,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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IN THE

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LOCAL 777, S.I.U.N.A., AFL-CIO,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner, Yellow Cab Company, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in this case on July 15, 1968.

Reference to Opinion Below

The opinion of the Court of Appeals for the Seventh Circuit is attached as Appendix A to this petition.

Grounds on which Jurisdiction is Invoked

The judgment of the Court below was entered on July 15, 1968 (Appendix B). The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1).

QUESTIONS PRESENTED

1. Should a Federal Court *enforce* an arbitrator's award where the labor contract's terms expressly limiting his jurisdiction were *violated* by the arbitrator's assertion of jurisdiction?
2. Is a Federal Court review of compliance with procedural prerequisites to arbitration possible under Section 301 of the Labor Management Relations Act, 1947 *after* arbitration has taken place?
3. Should a Federal Court *enforce* an arbitrator's award where the award shows the Arbitrator asserted jurisdiction despite the fact that:
   a. The grievance was never reduced to writing as expressly required by the labor contract,
   b. The grievance was not appealed until 84 days after the employer's decision to deny it, despite the labor contract provision that grievances not appealed within 20 days "shall be considered as settled on the basis of the last decision and shall not be subject to further appeal."
   c. The labor contract expressly provided "The jurisdiction and power of the arbitrator shall be strictly limited to the application of the terms and provisions of this Agreement . . ."
4. Does an award of over a year's "back pay" for a period during which the arbitrator expressly ruled the grievant *was not entitled to employment* show sufficient partiality and bias that a court should vacate (or refuse to enforce) the award under the provisions of the U. S. Arbitration Act?

Statutes Involved

The statutory provisions involved are Section 301 of the Labor Management Relations Act, 1947 (61 Stat. 156, 29 U.S.C. Section 185) and Sections 9 and 10 of the U. S. Arbitration Act (61 Stat. 669, 9 U.S.C., Sections 9 and 10). The text of these statutes is set forth in Appendix C.

Statement of the Case

This action was brought by Yellow Cab Company's petition to vacate a labor arbitrator's award of back pay to a discharged employee. Relief was requested because the arbitrator exceeded his contractual jurisdiction and authority and the award exhibited evident partiality and bias. On cross-motions for summary judgment the District Court denied petitioner's motion and, granting the prayer of the cross-petition, ordered enforcement of the award. The Court of Appeals affirmed the District Court.

The facts are:

A taxicab driver was discharged when, three times within the course of a single week, he returned his cab to the garage or requested it to be towed in before the end of his shift. He complained of fumes in the three different cabs, but the employer's inspection of and comments of other drivers of the same cabs failed to confirm the presence of any fumes or any defect to which they could be attributed. (App. 15-19, 4)*

Three days after the discharge the union interceded for the discharged driver at a grievance meeting held on May 13. The employer representative said the driver "was fired for being unsuitable for the job and that was

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* References are to the printed appendix, certified by the Clerk of the Court of Appeals as part of the record.

that." During the following 70 days the union made no attempt to communicate with the employer on this matter. Then, at a grievance meeting, the union attempted to reopen the subject, but the employer refused to change its original decision. 84 days after the May 13 meeting the union requested arbitration. (App. 4-5)

No grievance had been put into writing and the appeal was not made within 20 days of the employer's May 13 decision, both of which requirements were specifically set forth in the labor contract (App. 11-12) which also contained a provision stating (App. 13):

> "The jurisdiction and power of the arbitrator shall be strictly limited to the application of the terms and provisions of this Agreement * * * and he shall have no jurisdiction or power to alter or modify, in whole or in part, any provisions of this Agreement."

Nevertheless, the Employer, following the rule indicated in *Local Union No. 51* v. *Illinois Power Co.*, 357 F(2d) 916 (CA 7, 1966); *cert. den.* 385 U.S. 850 (1966), joined in the submission to arbitration, but protested the jurisdiction of the arbitration because the contractual prerequisites to arbitration had not been met. The arbitrator dismissed this contention with the comment that "numerous [unwritten] grievances have been presented by the union . . ." (but with no comment that any such grievances had been arbitrated) and a conclusion that the 20-day period for appeal to arbitration commenced with the union's attempt to reopen the case (70 days after the employer's May 13 decision) because many other discharged employees had been reinstated and "The company may have regarded its [May 13] decision as final. The union apparently did not regard the company's decision as being unsusceptible to change . . ." (App. 24-25)

The arbitrator ruled "the failure of the company to give a warning to the grievant renders the discharge unjust," and "Since the discharge was without just cause, it is clear that the grievant is entitled to his back pay up to the time of this award". (App. 30). The "clarity" of the decision to award back pay was clouded by the further ruling that the grievant, 9 days after his discharge, disqualified himself as an employee (App. 34). "Back Pay" for more than a year following this date was awarded (App. 47).

The District Court refused to review the arbitrator's determination relating to procedural arbitrability, but nevertheless found "that the Arbitrator did not exceed his authority under the collective bargaining agreement and that it does not appear that the Arbitrator in his decision and award was biased or partial to the union." (App. 54)

Even though the arbitrator's ruling on procedural matters dealt with his own jurisdiction and power to rule, the Court of Appeals held that the procedural questions involved the arbitrator's "construction of the contract" which construction should not be overruled by the courts and, further, it did not "find an inconsistency [in the award of back pay] so glaring as to require us to vacate the arbitrator's award." (Appendix A, pages 4a, 5a).

Basis for Federal Jurisdiction

Suit was brought in accordance with the Federal Arbitration Act (61 Stat. 669, 9 U.S.C. Sections 9, 10). The District Court derived jurisdiction under Section 301 of the Labor Management Relations Act, 1947, (61 Stat. 156, 29 U.S.C., Section 185).

REASONS FOR GRANTING THE WRIT

There are three special and important reasons for granting the writ of Certiorari in this case:

1.

There is a conflict between the decision in this case and that of the Second Circuit Court of Appeals in *Torrington Co.* v. *Metal Products Workers Union* where the court stated, "We hold that the question of an arbitrator's authority is subject to judicial review * * *".[1]

2.

This Court should settle the current widespread uncertainty concerning the reviewability of an arbitrator's ruling on his own jurisdiction and power. *This Court's* statement that "When the arbitrator's words manifest an infidelity to this obligation [to interpret and apply the collective bargaining agreement] courts have no choice but to refuse enforcement of the award"[2] is at the root of the uncertainty and should be clarified.

3.

This Court should exercise its power of supervision to prevent enforcement by the lower courts of an arbitrator's award wherein the specific provisions of a contract are violated by the arbitrator's exercise of jurisdiction.

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[1] 362 F. 2d 677 at p. 680 (CA 2, 1966)

[2] *United Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593 at p. 597 (1960).

1.

THE CONFLICT

In the *Torrington*[3] case the arbitrator "implied" a long standing practice not stated in the labor contract and issued an award in accordance with that practice. The court *vacated* the award since the arbitration clause stated that the arbitrator "shall have no power to add to" the contract.

In this case the arbitration clause was almost identical in substance to that in *Torrington*. It stated the arbitrator had no "jurisdiction or power * * * to alter or modify" the provisions of the labor contract. In asserting jurisdiction the arbitrator altered the contract provisions which required that grievances be placed in writing and appealed within 20 days of the Employers' decision. The Court *enforced* the award.

Thus in the Second Circuit the arbitrator is not permitted to *add* a provision to the contract while in the Seventh Circuit he is permitted to *violate* a provision that is already there—and the court will not even review his decision to determine whether or not he committed the violation. A court's power and responsibility to review must be the same in either case since the parties certainly did not agree that the arbitrator's power to *add* is subject to any different standard of review than his power to *alter*.

2.

THE IMPORTANT FEDERAL QUESTION

Whether or not an arbitrator should, *before arbitration*, be permitted to rule on his own jurisdiction and power has been settled by this Court. In the famous

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[3] 362 F2d 677 at p. 681 (CA 2, 1966)

Steelworkers' trilogy decisions[4] it was established that an arbitrator should so rule "unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute."[5] And in *John Wiley & Sons* v. *Livingston*[6] it was established that procedural questions should be submitted to the arbitrator for his decision.

To justify the effect of these rulings which might result in an erroneous ruling by the arbitrator the Court, with reference to both substantive and procedural questions, indicated that the arbitrator's decision *after it is made* is subject to judicial review. In *Enterprise*[7] the Court said:

> ". . . Nevertheless, an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award."

And in *Livingston*[8] this Court specifically affirmed the decision of the Second Circuit in which it was stated:

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[4] *United Steelworkers of America* v. *American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers of America* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

[5] *United Steelworkers of America* v. *Warrior & Gulf Nav. Co.*, 363 U.S. 574, at pp. 582-583 (1960)

[6] 376 U.S. 543 (1964)

[7] 363 U.S. 593 at p. 597 (1960)

[8] 376 U.S. 543 (1964)

> "Of course, if the arbitrator . . . should make an award which is completely without root and foundation in the collective bargaining agreement itself, we have no doubt that the courts would have no choice but to refuse enforcement of the award. . . ."[9]

The *Trilogy* decisions created a storm of interest in the field of labor relations. Virtually every leading legal publication has had at least one important article dealing with the meaning of and possible ramifications of the principles there established. And, following 1960, a number of arbitrator's awards have been brought to litigation in suits to vacate or to enforce because of an alleged error in an arbitrator's ruling on his own jurisdiction.[10]

This Court has not yet considered such a case.

The instant case presents an ideal vehicle for this Court to settle with finality the reviewability of an arbitrator's ruling on his own jurisdiction. The labor contract provisions are clear, definite, and are identical in substance with those incorporated in thousands of labor contracts. There are no disputed or unique facts which would cloud the decision or limit the universality of its application.

The cross petitions here will permit a decision defining a court's power to vacate *or* to enforce an award, or to refuse to do either.

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[9] *Livingston* v. *John Wiley & Sons Inc.*, 313 F. 2d 52 at p. 59, footnote 5 (CA 2, 1963)

[10] See cases cited at page 680 in *Torrington Co.* v. *Metal Products Workers Union*, 362 F. 2d 677 (CA 2, 1966). See also: *Humble Oil & Refining Co.* v. *Local Union 866*, 271 F. Supp. 281 (SD NY, 1967); *Ludwig Honold Mfg. Co.* v. *Fletcher*, 275 F.Supp. 776 (E.D. Pa., 1967).

3.

THE NEED FOR THE EXERCISE OF THIS COURT'S POWER

This simple case raises a number of vital matters of policy and law. Among these are the following:

Can the Federal Courts, under Section 301 of the Labor Management Relations Act, 1947[11] deny enforcement of specific provisions of a labor contract? Certainly it is no longer contended that the courts should review the *merits* of an award where the parties themselves have agreed that the arbitrator's award shall be final and binding. However, the provisions dealing with the arbitrators' jurisdiction can be violated *only by him* when he asserts jurisdiction improperly or refuses to interpret and apply only the contract before him. Thus there is *no* remedy for an arbitrator's error in this respect unless the Courts will review this aspect of his decision. Otherwise the stated limitations are reduced from binding contractual commitments to mere directions which the person intended to be controlled may ignore at will.

An arbitrator deciding on his own jurisdiction is subject to a clear conflict of interest. If he accepts jurisdiction, the additional time spent considering the merits of the case will increase his fee. Such a built-in conflict should not be permitted to cloud the arbitration process and diminish the confidence of both unions and employers in using it. The arbitration process has been established as a desirable one for the settlement of industrial disputes. But it is *not* perfect. Paul R. Hayes,[12]

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[11] 61 Stat. 156, 29 USC, Sec. 185. (Appendix C, pp. 8a-9a)

[12] In his *Storrs Lectures on Jurisprudence* at the Yale Law School, 1964, as published in *Labor Arbitration—A Dissenting View* (Yale University Press, 1966)

now a Federal Judge, speaks, from 16 years of experience as an arbitrator, of "rigged awards", incompetent arbitrators, political pressures on arbitrators, and other factors which can undermine the procedure. A policing of the procedure—and only the federal courts can do this—is necessary if bad decisions are to be weeded out and the standards of the process maintained at a respectable level to continue its acceptability as a vehicle for settling industrial disputes.

In this case, the arbitrator awarded back pay for a period of over a year following the date he ruled the grievant was not entitled to employment. Such a ruling offends common sense and rationality. It has been said that the "pragmatic" approach of arbitrators and the exercise by them of flexibility in fashioning remedies[13] is desirable. But what are the outer limits of this philosophy? Since the parties have agreed to submit to arbitration, are they bound by *any* remedy the arbitrator assesses? Surely there are some outer limits to this power. An arbitrator need not state reasons for his decision. When he does, however, and his reasoning clearly offends common sense and acceptable concepts of fairness, the award should not be enforceable.

The Federal Arbitration Act[14] specifically provides the power for a Federal Court to vacate an arbitrator's award where he has exceeded his powers or there is "evident partiality." This Act has not been referred to in the recent decisions concerning *labor* arbitrator's awards. This Court should indicate whether that statute

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[13] *United Steelworkers of America* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593 at p. 597 (1960)

[14] 61 Stat. 669, 9 U.S.C. Section 10(b) (Appendix C, pp. 7a-8a)

is applicable to a suit to vacate a *labor* arbitrator's award as well as the degree of partiality which must be shown in the arbitrator's decision to require such an order.

Further needs for clarification of the law in this area are more extensively stated in a recent article in The Business Lawyer, July 1968, page 1035.

Conclusion

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

Opinion of the United States Court of Appeals for the Seventh Circuit

July 15, 1968

Before HASTINGS, FAIRCHILD and CUMMINGS, *Circuit Judges.*

HASTINGS, *Circuit Judge.* Yellow Cab Company appeals from a judgment order of the district court entered January 12, 1968 enforcing an arbitration award and denying appellant's motion for summary judgment vacating the award. Appellant, a Maine corporation, operates a fleet of taxicabs in Chicago, Illinois. Appellee union[1] (the union) is the certified collective bargaining agent of appellant's drivers.

On May 10, 1966, appellant discharged Harold Ray, one of its cab drivers, on the ground that he was unsuitable for employment as a driver. The union intervened on Ray's behalf at a grievance meeting on May 13. At that meeting appellant refused to reconsider its discharge of Ray. There was no further communication on the matter between appellant and the union until ten weeks later when the union, at a regular grievance meeting, attempted to discuss the reinstatement of Ray. Appellant refused to discuss the matter. Two weeks later, on August 5, 1966, the union requested arbitration.

At the outset of arbitration proceedings appellant challenged the arbitrability of the dispute, contending the union had not complied with contractual requirements that grievances be submitted in writing and that requests

[1] Democratic Union Organizing Committee, Local 777, S.I.U.N.A., AFL-CIO.

for arbitration be submitted within twenty days after the Company's adverse decision on a grievance.[2]

The arbitrator rejected the first of these contentions on the ground that appellant had not previously enforced the writing requirement, although numerous grievances had been processed. He rejected the second contention on the ground that the twenty-day limitation on requests for arbitration should be measured from the date of the last discussion of Ray's discharge between appellant and the union. The arbitrator construed the arbitration provision of the contract as having the purpose of encouraging voluntary settlement of grievances prior to arbitration. He found that many discharge grievances concerning appellant's drivers had been settled in the course of time by reinstatement and concluded that the purpose of the grievance procedure would be frustrated if the contract were narrowly construed to require resort to arbitration within twenty days of the Company's first denial of a grievance. As he saw it "the issue * * * is whether or not there was a reasonable basis for the union's belief that the grievance was still open for dis-

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[2] ARTICLE IV—SUSPENSION, DISCHARGE AND LAYOFFS—GRIEVANCE PROCEDURE

* * *

(a) A statement in writing by the aggrieved employee of his version of the controversy which led to his suspension or discharge shall be submitted to the representative of the Company, together with the written statement of the grievance.

* * *

ARTICLE V—ARBITRATION

Section 1—If the parties herein shall be unable to reach a settlement of a grievance, either party may submit the grievance to arbitration by sending to the other party by registered or certified mail within twenty (20) days * * * a notice in writing in which the matter to be arbitrated is clearly set forth.

cussion and possible settlement." He found that there was.

On the merits the arbitrator concluded that Ray's discharge was unjust. He awarded Ray back pay in the amount of $3,033.66. However, he denied reinstatement, finding that a letter which Ray wrote to appellant's insurance carrier following his discharge revealed a motivation that disqualified him as an employee.

Appellant petitioned the district court on May 26, 1967 to vacate the arbitrator's award on grounds that he exceeded his power and displayed evident bias and partiality. The union cross-petitioned for enforcement of the award, and both parties moved for summary judgment. The court, in its memorandum order granting summary judgment for the union, refused to review the arbitrator's determination of the procedural questions and found that the arbitrator neither exceeded his authority nor displayed bias or partiality.

The first question presented by this appeal is whether the arbitrator's decision on questions of procedural arbitrability are subject to judicial review. The Supreme Court has held that disagreements concerning procedural arbitrability should not be considered as separate disputes, but as aspects of the dispute which called the grievance procedure into play and should therefore be left to the arbitrator. *John Wiley & Sons* v. *Livingston,* 376 U.S. 543 (1964). It cannot be supposed that the courts, recognizing the arbitrator's exclusive authority to determine procedural questions, may upset the arbitrator's determination in a review proceeding, unless it is arbitrary, capricious or not adequately grounded on the applicable collective bargaining agreement. See *Dallas Typographical Union No. 173* v. *A. H. Belo Corp.,* 5 Cir., 372 F.2d 577 (1967).

The arbitrator's resolution of procedural questions is a part of his decision on the merits of the dispute, as the Supreme Court suggested in *Wiley.* As such, it is subject to the limited standard of review annunciated in *United*

Steelworkers v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960):

> "[A]n arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award." 363 U.S. at 597. *Torrington Co.* v. *Metal Products Workers Union Local 1645*, 2 Cir., 362 F.2d 677 (1966).

The arbitrator's decision, including his resolution of the procedural questions, clearly draws its essence from the contract. Appellant does not suggest that his decision on the merits is not based on the contract. His decision that compliance with the requirement of written grievances had been excused was based on the parties' practical construction of the contract. "The labor arbitrator's source of law is not confined to the express provisions of the contract, as the industrial common law—the practices of the industry and the shop—is equally a part of the collective bargaining agreement although not expressed in it." *United Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574, 581-582 (1960). The arbitrator's decision that the period of limitation for filing arbitration requests runs from the parties' last discussion of the grievance was based on his interpretation of the contract in light of the practice of the shop.

We do not sit to pass upon the arbitrator's construction of contractual provisions. "[T]he question of interpretation of the collective bargaining agreement is a question for the arbitrator. It is the arbitrator's construction which was bargained for; and so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his." *United Steelworkers*

v. *Enterprise Wheel & Car Corp., supra* at 599. *Avco Corp.* v. *Mitchell*, 6 Cir., 336 F.2d 289 (1964).

We find nothing in *Torrington Co.* v. *Metal Products Workers Union Local 1645, supra*, that compels us to an opposite conclusion. The court there applied the same standard of review that we apply here, but concluded that the arbitrator's award did not draw its essence from the contract. That award was based on a company policy that had no foundation in the contract. The arbitrator there concluded that the policy was "carried over" when an existing contract was continued with modifications.

Appellant's contention that the arbitrator was biased rests solely on the alleged "outrageous" inconsistency between his award of back pay to Ray and his denial of reinstatement. The Supreme Court has recognized the need for flexibility in arbitration remedies. See *United Steelworkers* v. *Enterprise Wheel & Car Corp., supra.* The contract contains no provision on remedies, leaving the arbitrator free to exercise his discretion. The award of back pay to a wrongfully discharged employee is obviously within the authority of an arbitrator. Arbitration would be meaningless if the arbitrator lacked the authority to redress the economic wrong inflicted on such an employee.

We do not find an inconsistency so glaring as to require us to vacate the arbitrator's award. The letter found to disqualify Ray for employment was written after his wrongful discharge.

The judgment is affirmed.

AFFIRMED.

APPENDIX B

Judgment

UNITED STATES COURT OF APPEALS
For The Seventh Circuit
Chicago, Illinois 60604

Monday, July 15, 1968

Before
Hon. John S. Hastings, Circuit Judge
Hon. Thomas E. Fairchild, Circuit Judge
Hon. Walter J. Cummings, Circuit Judge

YELLOW CAB COMPANY,
Petitioner-Appellant
No. 16688 vs.
DEMOCRATIC UNION ORGANIZING COMMITTEE, LOCAL 777, S.I.U.N.A., AFL-CIO,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, Affirmed, with costs, in accordance with the opinion of this Court filed this day.

APPENDIX C

Statutes Involved

U.S. Arbitration Act, 61 Stat. 669, 9 U.S.C., Sections 9 and 10:

§ 9. Award of arbitrators; confirmation; jurisdiction; procedure

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court. July 30, 1947, c. 392. § 1, 61 Stat. 669.

§ 10. Same; vacation; grounds; rehearing

In either of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—

(a) Where the award was procured by corruption, fraud, or undue means.

(b) Where there was evident partiality or corruption in the arbitrators, or either of them.

(c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.

(d) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(e) Where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators. July 30, 1947, c. 392, § 1, 61 Stat. 669.

Labor Management Relations Act, 61 Stat. 156, 29 U.S.C. Section 185, (Taft-Hartley Act, Section 301):

§ 185. Suits by and against labor organizations.

(a) Venue, amount, and citizenship.

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgments.

Any labor organization which represents employees in an industry affecting commerce as defined in this chapter

and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) Jurisdiction.

For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) Service of process.

The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) Determination of question of agency.

For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling. (June 23, 1947, ch. 120, title III, § 301, 61 Stat. 156.)